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Intelligence Committee investigates FBI's misuse of NSLs

Washington, D.C. – The House Permanent Select Committee on Intelligence held an open hearing on the Federal Bureau of Investigation's (FBI) use of National Security Letters today. The focus of the hearing was the recent report by the Justice Department Inspector General, who found that the FBI had misused this tool – the authority to request private records, secretly, without judicial review – hundreds of times between 2003 and 2005.

“As someone who spent 26 ½ years in Law Enforcement prior to becoming a Member of Congress, I appreciate the importance of strong investigative tools. I want the FBI to have strong authority to find terrorists,” said Committee Chairman Silvestre Reyes, D-TX, in his opening statement.

“But massive data collection does not serve that purpose. If you are sifting through mounds of irrelevant data on people you believe have done nothing wrong, you are more likely to miss the relevant leads that can stop the next terrorist attack.

“The expanding use of NSLs would not be troubling in itself, if the FBI had proper controls for this powerful investigative tool. But the FBI does not. And, in fact, Inspector General Glenn Fine – our first witness today – found significant misuse by the FBI of this authority.”

The Committee received testimony from two separate panels. The first consisted of witnesses from the Executive Branch and included Glenn Fine, the Inspector General (IG) of the Department of Justice; Kenneth Wainstein, Assistant Attorney General for National Security; and John Pistole, Deputy Director of the FBI.

The second panel consisted of experts from outside of government: Jim Dempsey, Policy Director of the Center for Democracy and Technology; Lisa Graves, Deputy Director of the Center for National Security Studies; and Viet Dinh, Professor of Law at Georgetown University and former Assistant Attorney General for Legal Policy.

The IG's report found several serious problems in the issuance and record-keeping of NSLs, to include:

- An absence of effective FBI controls on the use of NSLs;
- Possibly as many as 3,000 violations of law or policy;
- Vast underreporting to Congress on the number of NSLs issued; and

- Extensive misuse of the “exigent letters” provision.

Chairman Reyes noted that, through the IG report “we have learned that, despite repeated assurances, the FBI was unable to do an effective job of policing its own use of this powerful tool for investigating terrorism.”

The FBI uses National Security Letters to obtain information from third parties, such as telephone companies, financial institutions, Internet Service providers, and consumer credit agencies.

“NSLs are no longer a limited, precise tool,” said Reyes. “They have become a broad license to collect information on Americans. Much of the information sought is not useful to a terrorism investigation. Indeed, FBI officials admit that most of the time, the FBI uses NSLs to gather information on people it believes are not suspects in order to eliminate them from further consideration.”

“In passing and reauthorizing the USA PATRIOT Act, we entrusted the FBI with very effective investigatory powers. Unfortunately, whether through abuse or simple mismanagement, they have betrayed that trust, and there must be accountability.

“We will remain focused on this subject moving forward in the 110th Congress.”